

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION – FELONY BRANCH**

**UNITED STATES**

**v.**

**DERRICK BABB**

)  
)  
)  
)  
)

**2012 CF1 010813**

**Judge Thomas Motley**

**Sentencing Date: December 18, 2012**

**GOVERNMENT’S MEMORANDUM IN AID OF SENTENCING**

The United States, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits the following memorandum to assist the Court in fashioning an appropriate sentence in this case.

**I. SENTENCING RECOMMENDATION**

On September 6, 2012, the defendant, Derrick Babb, pled guilty to one count of Assault with a Dangerous Weapon (“ADW”) for his involvement in a shooting outside of 1702 17<sup>th</sup> Street SE, in Washington, DC on June 20, 2012. As set forth in the Pre-Sentence Report (“PSR”), the defendant’s voluntary sentencing guideline range for ADW is 18-60 months, prison or short split permissible. However, as a term of the plea agreement, the government and the defendant agreed to limit any sentencing allocution requests to periods of incarceration between 36 and 60 months. For the reasons set forth below, the government respectfully requests that the Court sentence the defendant to 60 months incarceration.

**II. NATURE OF THE OFFENSE**

On the morning of June 20, the defendant took a loaded weapon and fired it toward a man who posed no immediate threat to the defendant and, by all accounts, lay helpless and immobile in the middle of 17<sup>th</sup> St. SE.

That morning, J'Ron Brown died of multiple gunshot wounds. Mr. Brown was shot three times, the most serious of those wounds entered on the left side of his chest and exited of the right side of his posterior torso. As detailed in the Factual Proffer, a number of shots were fired outside of 1702 17<sup>th</sup> St. SE before the defendant exited the building. When the defendant first observed the decedent, Mr. Brown was seated and slumped against a car and still breathing. Based on the defendant's location when he fired the gun at the decedent and the events preceding the defendant's actions, the government cannot prove (at this time) whether or not the bullet fired at Mr. Brown by the defendant was the fatal shot. However, based on the results of an autopsy on Mr. Brown and other evidence not detailed in these pleadings because the investigation into other involved parties is ongoing, the government believes that the fatal shot to Mr. Brown was more than likely fired in the first round of gunshots heard by witnesses before the defendant exited the building.

Notwithstanding these facts, the defendant's actions were purposeful and without care. To begin, it should be clear that this is **not** a case of self-defense or defense of others. As admitted in the Factual Proffer and in his statement to the PSR writer, when the defendant came out of the building where he was partying with his friends and family, all he knew about what had happened outside of the building was that shots had been fired. He did not know who had fired them or why. The defendant admits that his first thought was to help his wheel-chair bound friend into the house. Instead, he took a loaded gun from said friend and ran into the street to see who or what was there.

After the defendant took the gun from his friend (identified as S-2 in the Factual Proffer), the defendant ran from the front of 1702 17<sup>th</sup> Street, into and across 17<sup>th</sup> Street to the corner of his own vehicle, the blue Ford Explorer truck. (See Gov't Exhibit 1 below) From that vantage

point, the defendant observed the decedent seated and slumped against the burgundy Malibu on the opposite side of the street. The defendant did not observe the decedent with any weapon nor did the decedent take any offensive action against the defendant. Instead of running back into 1702 17<sup>th</sup> St. SE, calling 911 for help, or taking any number of other non-violent actions, the defendant crouched near the corner of his own truck, extended his arm toward the decedent and fired the gun in the direction of the decedent. After firing one shot, the defendant attempted to fire another shot but the gun jammed and he was unable to fire any additional rounds.



Government's Exhibit 1. Pictured above is the 1700 block of 17<sup>th</sup> St. SE on June 20, 2012. To the right of the photo, is the defendant's blue Ford Explorer truck. The second vehicle on the right side of the photo is the burgundy Chevy Malibu against which the decedent laid.

### **III. DETERMINING A JUST SENTENCE**

The Court has “great latitude” in fashioning a sentence. In addition to the criminal history of the defendant, a judge should consider four factors when imposing sentence: (a) the protection of

society against wrong-doers; (b) the punishment -- or much better -- the discipline of the wrong-doer; (c) the reformation and rehabilitation of the wrong-doer; and (d) the deterrence of others from the commission of like offenses. Spanziano v. Florida, 468 U.S. 447, 477-78 (1984) (Stevens, J., concurring); Williams v. New York, 337 U.S. 241, 251 (1949); Collins v. Francis, 728 F.2d 1322, 1339 (11th Cir. 1984).

However, the principal objective of sentencing is the protection of society, cf. Kelly v. Robinson, 479 U.S. 36 (1986) (criminal justice system operated for benefit of society as whole); Jones v. United States, 463 U.S. 354 (1983) (incarceration chosen to reflect society's view of proper response to commission of particular criminal offense), and the sentencing judge can consider a wide variety of information as to a defendant's background, character, and conduct, criminal or otherwise, when imposing a sentence. The Court may also weigh the details of the crime for which the defendant is being punished, Williams v. Oklahoma, 358 U.S. 576 (1959), and the deterrent effect of the sentence on others. See, e.g., United States v. Barbara, 683 F.2d 164 (6th Cir. 1982).

The defendant does deserve credit for accepting responsibility and for admitting his role in this offense. The government recognizes that this event has had an effect on the defendant which will take time to manage. It too has had an effect on the family of the decedent. We also recognize the existence of mitigating factors in favor of a more lenient sentence relative to the applicable DCVSG range – the defendant's age, lack of prior convictions for violent offenses, and early acceptance of responsibility. Our recommendation accounts for those factors. As explained above and will be discussed during the sentencing hearing, our request for a sentence of incarceration at the high end of the agreed upon sentencing range accounts for the defendant's actions on June 20 and his plea to one count of ADW, thereby avoiding a more serious penalty

for a weapons or an armed offense. The government's sentencing recommendation thereby affords the defendant credit for all of those factors in light of the seriousness of his conduct.

Finally, as a general matter, ADW is a serious offense. Here, the parties have entered into an agreement under Superior Court Rule 11(e)(1)(c), that the parties will restrict their allocution requests to a period of incarceration between 36 – 60 months. In this case, although the allegation is not that the defendant took the life of J'Ron Brown, the defendant **did** assault J'Ron Brown, while he was still alive. The spectrum of ADW cases is wide and the government views this case as one of the more serious, especially considering the fact that a firearm was involved in the offense. And that purposeful and unnecessary assault deserves just punishment. In the government's view, 60 months or 5 years is a just punishment for the defendant's actions.

#### **IV. CONCLUSION**

Wherefore, for the reasons stated above, the government requests that the Court sentence the defendant at the high end of the sentencing guideline range.

Respectfully submitted,

RONALD C. MACHEN JR.  
UNITED STATES ATTORNEY

By: \_\_\_\_\_-s-\_\_\_\_\_

REAGAN M. TAYLOR  
Assistant United States Attorney  
555 Fourth Street NW, RM. 9840  
Washington, DC 20530  
(202) 252-6819  
[Reagan.Taylor@usdoj.gov](mailto:Reagan.Taylor@usdoj.gov)

#### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this memorandum was served on counsel for the defense, Eugene Ohm, Esq., by email on the 16th of December, 2012.

\_\_\_\_\_-s-\_\_\_\_\_

REAGAN M. TAYLOR  
Assistant United States Attorney